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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,807	04/15/2004	Leo J. Yodock III	49737.23	1568
60474	7590	08/15/2006	EXAMINER	
GRAY ROBINSON, P.A. 401 E. LAS OLAS BLVD. SUITE 1850 FT. LAUDERDALE, FL 33301				SAFAVI, MICHAEL
		ART UNIT		PAPER NUMBER
		3673		

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/826,807	YODOCK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	M. Safavi	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on January 10, 2006 & April 12, 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5,7,8,10-15,19-24,26-28 and 43-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 15, 19-24, and 28 is/are allowed.
- 6) Claim(s) 1-5,7,8,10-15,19-24,26-28 and 43-50 is/are rejected.
- 7) Claim(s) 8 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/9/04; 3/16/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

***Election/Restrictions***

Applicant's election without traverse of the species of Fig. 29, (as to barrier unit), the species of Fig. 23, (as to coupler), and the species of Fig. 28, (as to tray), in the reply filed on October 31, 2005 and January 10, 2006 is acknowledged.

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 82 and 230'. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities: XX.

Appropriate correction is required. The specification appears to present numeral 220 as denoting both a "frame" and "cross braces". Further, the specification appears to present numeral 230 as denoting both a "warning light" and "cross braces".

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the said all-thread rod being received by said nut to connect the all-thread rod to said reinforcing member", (**claims 11 and 27**), as well as the "at least one of said side walls...[being] formed with

at least one seat located externally of said hollow interior, said at least one cable being mounted in said at least one seat", (**claims 45**), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11, 27, and 45 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not appear clear and complete as to an all-threaded rod being received by a nut to connect the all-threaded rod to a reinforcing member lying within the barrier unit as appears in each of claims 11 and 27. Nor, does the specification appear clear and complete as to a sidewall being formed with a seat located externally of said hollow interior with a cable mounted in the seat as appears in claim 45.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10, 11, 26, 27, and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 appears dependent upon a cancelled claim.

Claim 26 appears dependent upon a cancelled claim.

Each of claims 11 and 27 are not clear in that the specification does not appear clear and complete as to an all-thread rod being received by a nut to connect the all-thread rod to a reinforcing member lying within the barrier unit

Claim 45, it is not clear as to what is being defined by "at least one of said side walls is formed with at least one seat located externally of said hollow interior, said at least one cable being mounted in said at least one seat." The specification appear clear and complete as to a sidewall being formed with a seat located externally of said hollow interior with a cable mounted in the seat.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

**Claims 1-5, 7, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Glaesener '218.** As for claims 1-5, 7, and 12-14, Glaesener discloses, Figs. 1-5, a housing 50, 51 having a hollow interior, said housing being formed with opposed end walls, (ends of 50, 51), and at least one opening 18, (or that through which 11 extends); a reinforcing member 16/17 extending through said hollow

interior of said housing between said opposed end walls; a mounting post 11 having an outer portion and an inner portion 14, said inner portion of said mounting post being inserted through said opening in said housing into engagement with said reinforcing member, said outer portion of said mounting post being adapted to mount at least one accessory item, (such as 12); and a ballast weight, (lower portion of 23 for example, or lower portion of foam 21, 52, 53), connected to said housing, said ballast weight being effective to maintain said outer portion of said mounting post out of the water when said housing is placed in the water. Connector secured at a first end to said mounting post and at a second end to said ballast weight is that portion of 14 extending through 19.

**Claims 43, 44, 46-48, and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Riley '012.** As for **claims 43 and 47**, Riley discloses, Figs. 1 and 2, a housing 18 having a top wall, a bottom wall, opposed side walls and opposed end walls connected to form a hollow interior; a body of foam material 17 located within said hollow interior; at least one cable 4 connected to said housing and extending between said opposed end walls; a ballast weight, (any portion of 17 including a lower portion thereof), being effective, when said housing is placed in the water, to maintain said at least one cable out of the water. The cable 4 can be seen as completely surrounded by the foam 17 thus, embedded within said body of foam material, (**claims 44 and 48**). The cable 4 has opposed ends which protrude from the end walls and adapted to connect to a coupling device, (**claims 46 and 50**).

**Claims 43-50 are rejected under 35 U.S.C. 102(a) as being anticipated by Davis et al. '402.** As for claims 43 and 47, Davis discloses, Figs. 7a, 7b, 13, 14, and 16, a housing 22/40/34 having a top wall, a bottom wall, opposed side walls and opposed end walls connected to form a hollow interior; a body of foam material, (col. 5, lines 50, 57, and 63), located within said hollow interior; at least one cable 98 connected to said housing and extending between said opposed end walls; a ballast weight, (any portion of the foam including a lower portion thereof), being effective, when said housing is placed in the water, to maintain said at least one cable out of the water. The cable 98 can be seen as completely surrounded by the foam as shown in Fig. 7b thus, embedded within said body of foam material, (**claims 44 and 48**). The cable 98 can be seen as mounted within a seat formed in a sidewall externally of the hollow interior as is shown in Fig. 7a, (**claim 45**). The foam also possesses a "seat" as can be seen in Fig. 7a, (by virtue of the shape of the structure 80) thus, the cable 98 lies within a seat formed in the foam body, (**claim 49**). The cable 4 has opposed ends which protrude from the end walls and adapted to connect to a coupling device, (**claims 46 and 50**).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 47, 48, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sessions '131 in view of Riley '012.**

Sessions '131 discloses, Figs. 2-5, a body of material 17 having a top wall, a bottom wall, opposed side walls and opposed end walls connected to form a hollow interior; at least one cable 19 connected to said body of material and extending between said opposed end walls; a ballast weight 18 being effective, when said housing is placed in the water, to maintain said at least one cable out of the water. The cable 19 can be seen as completely surrounded by the body of material 17 thus, embedded within said body of foam material, (**claims 44 and 48**). The cable 10 has opposed ends 20 which protrude from the end walls and adapted to connect to a coupling device, (**claims 46 and 50**). Sessions does not appear to specifically disclose the body of material 17 as a foam material.

However, Riley '012 discloses a barrier float formed of a foam material 17. Therefore, to have formed the Sessions '131 barrier 17 from a foam material, thus allowing use of such old and well known floatable material, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Riley '012.

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 15, 19-24, and 28 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MICHAEL SAFAVI  
PRIMARY EXAMINE  
ART UNIT 3673

M. Safavi  
June 26, 2006